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# THE COMPULSORY DUPLICATION OF STOCK CERTIFICATES.

§ 1. INTRODUCTORY.

Whenever two certificates are issued by a corporation representing the same shares of stock, the legal situations which may arise are varied, complicated, and interesting. If the two certificates are in the hands of different owners, one of three parties must suffer. One or the other of the certificate-holders must lose the stock; and the loser must either bear his loss, or throw it upon the corporation if he can. Before proceeding to the consideration of our particular subject, therefore, it will be well to consider briefly some of the general principles governing the issue of stock-certificates and the transfer of stock.

1. The registered owner of stock can be deprived of his title to such stock only by his own act,[1] or by some legal proceeding *quasi in rem*.[2]

2. There are two essential factors in the transfer of the legal title to stock. One is the transfer of the interest of the registered owner in accordance with the preceding rule; the

[1] Colonial Bank *v.* Cady, 15 A. C. 267 (1890); Telegraph Co. *v.* Davenport, 97 U. S. 643 (1878).

[2] Dewing *v.* Perdicaries, 96 U. S. 193 (1877); Chapman *v.* Phœnix Nat. Bank, 85 N. Y. 437 (1881).

other is the recognition of this transfer by the corporation. When both of these take place the legal title to the stock is transferred.[1] This principle seems to have been overlooked in *Telford Turnpike Co.* v. *Gerhab.*[2] In that case A., the registered owner of stock transferred his certificate to B. The corporation had notice of the transfer, which, however, was not recorded. Subsequently the stock was attached by a creditor of A.'s and sold to C. at the execution sale, C. having notice of the prior transfer to B. The corporation recognized C. as the owner of the stock. In an action for damages brought by B. against the corporation, the court held that B. could not recover the value of the stock, but only for the damage he had sustained by reason of the defendant's refusal to recognize the transfer to him; on the ground that *no title* to the stock had passed to C. Now, while B. clearly had the superior equitable right to the stock, and could enforce his claims against both C. and the corporation, it seems that C. had acquired the legal title to the stock by virtue of the act of the corporation in recognizing the execution sale as transferring A.'s interest in the stock. Suppose that C. had sold his certificate to D., a purchaser without notice of B.'s claim, would not D.'s title to the stock have been superior to C.'s?

3. The transfer of the stock certificate by indorsement and delivery operates as a complete equitable assignment of the stock.[3] Since the assignment is *complete*, equity will enforce it even in favor of a volunteer,[4] whereas an incomplete assignment is unenforceable unless the assignee has given value.[5] There is much confusion in the books in the use of the terms "legal title" and "equitable title" with reference to stock. It is often said, for example, that the legal title passes as between the parties by the indorsement and delivery of the certificate.

[1] New York, N. H. & H. R. Co. *v.* Schuyler, 34 N. Y. 30 (1865); London *v.* Prov. Tel. Co., L. R. 9 Eq. 653 (1870).

[2] 13 Atl. 90 (1888).

[3] Black *v.* Zacharie, 3 How. 482 (1845).

[4] Cushman *v.* Thayer Mfg. Co., 76 N. Y. 365 (1879).

[5] This distinction is clearly pointed out in Harding *v.* Harding, 17 Q. B. D. 442 (1886).

Force is given to this statement by the fact that the assignee of the certificate is often allowed legal remedies to enforce his rights. Thus, it is often held that the assignee of the certificate may sue the corporation for conversion of the stock if it fails to recognize his right to the stock; and in some jurisdictions mandamus will lie against the corporation to compel a recognition of the transfer. The existence of legal remedies, however, while it gives rise to many anomalies, does not change the essential character of an equitable right. The legal title to stock is acquired only when the corporation recognizes the transfer.[1] Some of the American decisions, it is true, establish a different rule in regard to the priority of equitable interests in stock from that which is upheld in England,[2] but such decisions do not and cannot affect the essential requisites of transfer of the legal title.

4. The issue of a stock-certificate amounts to an affirmation on the part of the corporation that the person named therein is the legal owner of the stock. This affirmation works an estoppel against the corporation in favor of one who acts in reliance upon it.[3] This affirmation will be enforced specifically if possible;[4] but if specific performance is impossible, as where the certificate represents an over-issue, the party claiming the benefit of the estoppel is entitled to damages for the false representation.[5] This principle is too well established to be questioned; yet in a single instance our courts have either overlooked it or refused to apply it. In *Dewing* v. *Perdicaries*,[6] stock in a South Carolina corporation belonging to loyal owners was sequestrated by judicial proceedings taken in the Confederate District Court in accordance with a statute of the Confederate States. The sequestrated

[1] Shropshire Union Canal Co. *v.* Queen, L. R. 7 H. L. 496 (1875); Winter *v.* Belmont Mining Co., 53 Cal. 428 (1879); Société Générale de Paris *v.* Walker, 11 A. C. 20 (1885); New York, N. H. & H. R. Co. *v.* Schuyler, 34 N. Y. 30 (1865).

[2] Winter *v.* Montgomery Gas Light Co., 89 Ala. 544, 7 S. 773 (1890).

[3] Simm *v.* Anglo-Amer. Tel. Co., 5 Q. B. D. 188 (1879); Mandlebaum *v.* North Amer. Min. Co., 4 Mich. 465 (1857).

[4] Barkinshaw *v.* Nicolls, 3 A. C. 1004 (1878).

[5] New York, N. H. & H. R. Co. *v.* Schuyler, *supra;* In re Bahia & S. F. Ry. Co., L. R. 3 Q. B. 584 (1868).

[6] 96 U. S. 193 (1877); Central R. Co. *v.* Ward, 37 Ga. 515 (1868).

stock was sold, and the corporation was compelled by the Confederate authorities to issue stock certificates to the purchasers. The Supreme Court held that the order of sequestration, the sale, the transfer, and the new certificates were void, and did not affect the rights of the loyal owners of the stock. The court also held that the transferees of the new certificates, although *bona fide* purchasers for value, could acquire no right of indemnity against the corporation. The reason given for this holding is that the transferee of the certificate can acquire no greater rights than his transferor possessed. The court seems to overlook the fact that the right of a *bona fide* purchaser of a void certificate against the corporation is not a derivative right, acquired by assignment from his transferror, but an independent right, personal to himself, and resulting from his having acted in reliance on the representation of the corporation contained in the certificate. The decision in question seems to have been influenced rather by patriotic than by legal reasoning.

5. Inasmuch as the transfer of the certificate by indorsement and delivery operates as a complete equitable assignment of the stock, the corporation acts at its peril in recognizing a transfer and issuing a new certificate when the old is not surrendered. It is, therefore, liable in damages to one who purchases the original certificate for value and without notice,[1] unless it can show that the holder of the new certificate has a better title to the stock than the holder of the original certificate.[2]

6. Ordinarily, the corporation is not bound to issue a new

[1] Bridgeport Bank *v.* N. Y. & N. H. R. Co., 30 Conn. 231 (1861); Société Générale de Paris *v.* Walker, 11 A. C. 20 (1885), per Lord Selborne; Bank *v.* Lanier, 11 Wall. 369 (1870); New York, N. Y. & H. R. Co. *v.* Schuyler, 34 N. Y. 30 (1865); Strange *v.* H. & T. C. Ry. Co., 53 Tex. 162 (1880); Hazard *v.* National Exchange Bank, 26 F. 94 (1886); Sargent *v.* Essex Marine Co., 9 Pick. 201 (1829); Factors' and Traders' Ins. Co. *v.* Marine Dry Dock Co., 31 La. Ann. 149 (1879); De Comean *v.* Guild Farm Oil Co., 3 Daly, 218 (1870); Smith *v.* American Coal Co., 7 Lans. 317 (1873); Cushman *v.* Thayer Mfg. Co., 76 N. Y. 365 (1879); Keller *v.* Eureka Brick Co., 43 Mo. App. 84 (1890); Balkis Consol. Co. *v.* Tomkinson (1893) A. C. 396.

[2] Sprague *v.* Cocheco Mfg. Co., 10 Blatchf. 172 (1872); Fisher *v.* Essex Bank, 5 Gray, 373 (1855); Princeton Bank *v.* Crozer, 22 N. J. L. 383 (1850); Naglee *v.* Pacific Wharf Co., 20 Cal. 529 (1862); Blanchard *v.* Dedham Gas Light Co., 12 Gray, 213 (1858); Young *v.* So. Tredegar Iron Co., 1 Pickle, 189, 2 S. W, 202 (1886), *semble*.

certificate for stock unless the old is surrendered. In certain cases, however, the law requires the issue of a new certificate without the cancellation of the old. If the rule stated in the last paragraph be correct, the law should not compel the issue of a new certificate in such cases unless the rights of the holder of the new certificate are made paramount to those of the holder of the original. To require the corporation to issue a new certificate without requiring the surrender of the old, and without making the rights of the holder of the new certificate paramount, is to compel the corporation to incur a possible liability to the holder of the original certificate, a result which is manifestly unjust to the corporation. Yet there are two classes of cases in which the law thus ignores the rights of the corporation. It need hardly be said that such law is the result of legislative, not of judicial action. In the first class of cases the law requires the issue of a new certificate to one who claims the stock, not by virtue of a voluntary transfer by the owner, but as the result of a judicial seizure of the stock. In the second class of cases the new certificate must be issued to replace an original supposed to be lost or destroyed.

§ 2. COMPULSORY DUPLICATION OF CERTIFICATES IN CONSEQUENCE OF JUDICIAL SEIZURE OF STOCK.

The seizure of stock by legal process is purely a matter of statute. Two theories exist as to the nature of such seizure. According to the first theory, which prevails almost everywhere, stock is seized by a proceeding *quasi in rem* brought against the owner personally, and against the stock by giving notice in some form to the corporation at its domicile. According to the second theory, stock may be seized by seizing the certificates of stock in the hands of the holder.

I. SEIZURE OF STOCK AT THE DOMICILE OF THE CORPORATION.

The methods of seizure provided by statute in various jurisdictions are numerous. The following methods are more or less common: Attachment, execution, involuntary bankruptcy, garnishment of the corporation, seizure for taxes, confiscation, charging orders on the stock, and statutory equitable proceedings *quasi in rem*. It is not the purpose of this article

to discuss these methods in detail, but simply to point out the effect upon the corporation of the duplication of certificates in consequence of such proceedings. For it is almost universally held that the person claiming title to the stock in consequence of such seizure is entitled to a new certificate of stock; and of course he is unable to surrender the old certificate, which is not in his possession or control. The determination of the liability of the corporation in these cases is a simple matter if we bear in mind the rule given in § 1, par. 5. The test of such liability to a purchaser of the original certificate for value and without notice is the relation between the rights of such purchaser and those of the holder of the new certificate. Disregarding, therefore, the manifold differences in statutes and statutory construction, our attention will be confined to the examination of the different rules which have been applied to determine the respective merits of the claims of the holders of the two certificates.

(*a.*) When the seizure of the stock by process directed against the interest of the registered owner takes place, no subsequent transfer of the original certificate by the owner can confer any right upon the transferee as against the corporation or the party claiming under the seizure.[1]

(*b.*) In the following cases the rights of the transferee for value before the seizure have been held superior to those of the party claiming under the seizure.[2] This rule does not protect a

[1] Sprague *v.* Cocheco Mfg. Co., 10 Blatchf. 172 (1872); Wilson *v.* Atlantic, etc., Ry. Co., 2 F. 459 (1880); Kentucky Nat. Bank *v.* Avery, 12 Nat. Corp. Rep. 111, Ky. C. C. (1896); Harris *v.* Bank, 5 La. Ann. 538 (1850); Morehead *v.* Western N. C. R. Co., 96 N. C. 362, 2 S. E. 247 (1887); Young *v.* So. Tredegar Iron Co., 1 Pickle, 189, 2 S. W. 202 (1886); Chesapeake & Ohio R. Co. *v.* Paine, 29 Gratt. 502 (1877); Shenandoah Valley R. Co. *v.* Griffith, 76 Va. 913 (1882).

[2] Continental Nat. Bank *v.* Eliot Natl. Bank, 7 F. 369 (1881); Scott *v.* Bank, 21 Blatchf. 203, 15 F. 494 (1883); Hazard *v.* National Exch. Bank, 26 F. 94 (1886); Manus *v.* Brookville Nat. Bank, 73 Ind. 243 (1881); Thurber *v.* Crump, 86 Ky. 408 (1887), *semble;* Kentucky Nat. Bank *v.* Avery, (Ky. C. C.) 12 Nat. Corp. Report. 111 (1896); Smith *v.* Crescent City Co., 30 La. Ann. 1378 (1878); Friedlander *v.* Slaughterhouse Co., 31 La. Ann. 523 (1879); Pitot *v.* Johnson, 33 La. Ann. 1286 (1881); Kern *v.* Day, 45 La. Ann. 71, 12 S. 6 (1893); Boston Music Hall Ass'n *v.* Cory, 129 Mass. 435 (1880); Andrews *v.* Worcester R. R. Co., 159 Mass. 64, 33 N. E. 1109 (1893); Lund *v.* Wheaton Roller Mill Co., 50 Minn. 36, 52 N. W. 268 (1892); Broadway Bank *v.* McElrath, 13 N. J. Eq. 24 (1860); De Comean *v.* Guild Farm Oil Co., 3 Daly, 218 (1870); Smith *v.* American Coal Co., 7 Lans. 317 (1873); Dunn *v.* Star Ins. Co., (N. Y. Supreme

transferee who has not given value;[3] it simply recognizes the rights of purchasers as superior to those of creditors and other persons claiming under the seizure. The preference of purchasers over creditors seems in accordance with enlightened public policy, yet wherever this rule holds good the corporation runs the risk of incurring liability in consequence of a duplication of certificates; for if it has no notice of the prior assignment of the stock by the registered owner, it may be compelled to issue a new certificate to the party claiming under the seizure, thereby becoming liable in damages to the assignee of the original certificate.

(*c.*) In the following cases the rights of the party claiming under the seizure have been held superior to those of an assignee of the certificate claiming by a transfer before the seizure.[4] This rule protects the corporation in issuing a new certificate, but bears harshly on the *bona fide* purchaser of the original certificate. The rule seems to rest on statutes giving creditors greater rights than purchasers for value. A purchaser for value of the legal title is bound in equity by notice of a prior equitable assignment, but under this rule a creditor is not.

(*d.*) In many cases the rights of the different claimants of the stock are made to depend upon the question of notice to the party claiming under the seizure. In the following cases the rights of the party claiming under the seizure without

Ct.,) 19 N. Y. Weekly Digest, 531 (1884); Weller *v.* J. B. Pace Tobacco Co., 2 N. Y. Supp. 292 (1888); Morehead *v.* Western N. C. R. Co., 96 N. C. 362, 2 S. E. 247 (1887); Norton *v.* Norton, 43 Ohio St. 509, 3 N. E. 348 (1885); Haldeman *v.* Hillsborough, etc., R. Co., 2 Handy, 101 (1855); United States *v.* Vaughan, 3 Binney, 394 (1811); Commonwealth *v.* Watmough, 6 Whart. 117 (1840), *semble*; Finney's Appeal, 59 Pa. St. 398 (1868); Cornick, *v.* Richards, 3 Lea, 1 (1879), *semble*; Seligson *v.* Brown, 61 Tex. 114 (1884); Chesapeake & O. R. Co. *v.* Paine, 29 Gratt. 502 (1877); and see, Gill *v.* Continental Gas Co., L. R. 7 Ex. 332 (1872); Gray *v.* Stone, (1893) W. N. 133.

[3] Bidstrup *v.* Thompson, 45 F. 452 (1891); Cornick *v.* Richards, 3 Lea, 1 (1879).

[4] Coleman *v.* Spencer, 5 Blackf. 197 (1839); Fiske *v.* Carr, 20 Me. 301 (1841); Skowhegan Bank *v.* Cutler, 49 Me. 315 (1860); Fisher *v.* Essex Bank, 5 Gray, 373 (1855); Boyd *v.* Rockport Mills, 7 Gray, 406 (1856); Blanchard *v.* Dedham Gas Light Co., 12 Gray, 213 (1858); Rock *v.* Nichols, 3 Allen, 342 (1862); Newell *v.* Williston, 138 Mass. 240 (1885); Application of Murphy, 51 Wis. 519 (1881); and see Weston *v.* Bear River Co., 5 Cal. 186 (1855), where the same rule was laid down, but modified on rehearing in 6 Cal. 425.

notice of a prior assignment have been held superior to those of the party claiming under such assignment.[1]

(*e*.) In the following cases the party claiming under the seizure had notice of the prior transfer, and his rights were therefore held inferior to those of the prior transferee.[2]

(*f*.) In those cases where notice of the prior transfer is held to determine the rights of the party claiming under the seizure, there is a diversity of opinion as to when such notice is material. Some courts hold that notice at any time before the *sale* under the seizure binds the purchaser,[3] while others hold that notice after the seizure is of no consequence.[4]

(*g*.) When the rights of the party claiming under the seizure are made dependent on his having no notice of a prior transfer, as in the cases under (*d*), (*e*) and (*f*), it is clear that the protection of the corporation from liability to the holder of the original certificate in consequence of its issue of a new one is entirely inadequate. Such protection depends upon a fact which the corporation has no means of determining, viz.: notice to one party of the rights of the other.

(*h*.) Where the rights of the assignee of the certificate are held superior to those of a party claiming under a subsequent

[1] Dittey *v.* First Nat. Bank, 20 South. R. 476 (1896); Naglee *v.* Pacific Wharf Co., 20 Cal. 529 (1862); Farmers' Nat. Gold Bank *v.* Wilson, 58 Cal. 600 (1881); Northrop *v.* Newtown Turnpike Co., 3 Conn. 544 (1820); Trimble *v.* Vandegrift, 7 Houst. 451, 32 A. 632 (1887); People's Bank *v.* Gridley, 91 Ill. 457 (1879); People *v.* Goss Mfg. Co., 99 Ill. 355 (1881); Fort Madison Lumber Co. *v.* Batavian Bank, 71 Ia. 270, 32 N. W. 336 (1887); Pinkerton *v.* R. Co., 42 N. H. 424 (1861); Buttrick *v.* Nashua & Lowell R. R., 62 N. H. 413 (1882); Sabin *v.* Bank of Woodstock, 21 Vt. 353 (1849), *semble;* and see, Parker *v.* Sun Ins. Co., 42 La. Ann. 1172, 8 S. 618 (1890).

[2] Black *v.* Zacharie, 3 How. 482 (1845); Bridgewater Iron Co. *v.* Lissberger, 116 U. S. 8 (1885); Dittey *v.* First Nat. Bank, 20 South. R. 476 (1896); Weston *v.* Bear River Co., 6 Cal. 425 (1856); People *v.* Elmore, 35 Cal. 653 (1868); Farmers' Nat. Gold Bank *v.* Wilson, 58 Cal. 600 (1881); Blakeman *v.* Puget Sound Iron Co., 72 Cal. 321, 13 P. 872 (1887); Plymouth Bank *v.* Norfolk Bank, 10 Pick. 454 (1830); Dickinson *v.* Central Nat. Bank, 129 Mass. 279 (1879); Newberry *v.* Detroit Mfg. Co., 17 Mich. 141 (1868); Merchants' Nat. Bank *v.* Richards, 6 Mo. App. 454 (1877); affirmed 74 Mo. 77; Scripture *v.* Soapstone Co., 50 N. H. 571 (1871); Rogers *v.* N. J. Ins. Co., 8 N. J. Eq. 167 (1849); Cheever *v.* Meyer, 52 Vt. 66 (1879); Van Cise *v.* Merchants' Nat. Bank, 4 Dak. 485, 33 N. W. 897 (1887).

[3] Wilson *v.* St. Louis & S. F. R. Co., 108 Mo. 588, 18 S. W. 286 (1891).

[4] Jones *v.* Latham, 70 Ala. 164 (1881); Central Nat. Bank *v.* Williston, 138 Mass. 244 (1885).

seizure, such assignee may lose his rights, in some jurisdictions, at least, by failure to take steps to protect himself. In *Friedlander* v. *Slaughterhouse Co.*,[1] the transferee before levy had notice of the execution sale. The purchaser at the execution sale obtained a decree against the corporation requiring the issue of a new certificate to him. The corporation appealed from the decree, but the transferee of the original certificate took no steps to protect his rights, and the decree against the corporation was affirmed. It was held that the transferee of the certificate had lost his right of action against the corporation by his own neglect.

In *Noble* v. *Turner*,[2] the transferee of the certificate brought a bill to compel the transfer of the stock to him. The bill was dismissed because the stock had been sold seven years before upon execution against the registered owner, and the complainant was, therefore, held guilty of laches.

In *Cleveland, etc., R. Co.* v. *Robbins*,[3] however, it was held that the statute of limitations does not begin to run in favor of the corporation and against the transferee of the certificate until the corporation actually refuses to recognize the transfer, or the transferee has notice that the stock has been transferred to other parties, and this seems the more reasonable rule.

In some States, as in Alabama,[4] the transfer must be recorded within a certain time in order to be good against a creditor without notice. In Colorado the transfer must be recorded within sixty days, or it will not be good even against a creditor with notice,[5] unless the transferee has done all in his power to procure registration.[6]

Inasmuch as the corporation has no means of determining whether the transferee has slept on his rights or not, such rules afford it no adequate protection.

[1] 31 La. Ann. 523 (1879).

[2] 69 Md. 519, 16 A. 124 (1888).

[3] 35 Ohio St. 483 (1880).

[4] Berney Nat. Bank *v.* Pinckard, 87 Ala. 577, 6 S. 364 (1889); White *v.* Rankin, 90 Ala. 541, 8 S. 118 (1890); Abels *v.* Planters' Ins. Co., 92 Ala. 382, 9 S. 423 (1891).

[5] Conway *v.* John, 14 Col. 30, 23 P. 170 (1890); First Nat. Bank *v.* Hastings, 7 Col. App. 129, 42 P. 691 (1895).

[6] Weber *v.* Bullock, 19 Col. 214, 35 P. 163 (1894).

(*i.*) In some States an equitable interest in stock may be seized.[1] In Rhode Island it seems that the rights of the purchaser at judicial sale of such equitable interest are regarded as superior to those of a *subsequent* transferee of the certificate,[2] which is an exception to the general rule that purchase of the legal title for value and without notice cuts off equities. The corporation is protected in such cases, however, because the purchaser of the equitable interest thus seized cannot demand a certificate of stock.[3]

(*j.*) In Rhode Island the officer's deed to the purchaser of stock at an execution sale is held to vest the *title* to the stock in the purchaser.[4] The corporation is bound to record the deed, but is not obliged to issue a new certificate of stock.[5] This rule seems decidedly unsatisfactory. On the one hand, the execution purchaser is left without any certificate for his stock, the transfer of which is thereby rendered more difficult; while, on the other hand, it is not clear that the corporation is protected from liability to a transferee of the certificate claiming by assignment before the seizure.

(*k.*) By reason of the doctrine of relation, a seizure of the stock may operate to defeat a prior transfer of the certificate. In *Memphis Appeal Co.* v. *Pike*,[6] an execution levied in July was held superior to a transfer in June, because the levy related back to April 1st, the date of the execution.

(*l.*) The results of the foregoing decisions with reference to the liability of the corporation for issuing a duplicate certificate may be summed up briefly. The only doctrine which gives absolute protection to the corporation against liability to the holder of the original certificate is that stated in (*c*). Only where that doctrine prevails is the right of the holder of the new certificate indisputably superior to that of the holder of

[1] Foster *v.* Potter, 37 Mo. 526 (1866); National Bank of New London *v.* Lake Shore, etc., R. Co., 21 Ohio St. 221 (1871); Beckwith *v.* Burroughs, 14 R. I. 366 (1884).

[2] Beckwith *v.* Burroughs, *supra.*

[3] National Bank of New London *v.* Lake Shore, etc., R. Co., *supra.*

[4] Lippitt *v.* American Wood Paper Co., 14 R. I. 301 (1883); Beckwith *v.* Burroughs, 14 R. I. 366 (1884).

[5] Beckwith *v.* Burroughs, *supra.*

[6] 9 Heisk. 697 (1872).

the old. In all other cases the relative rights of the two claimants to the stock are made to depend upon some fact which the corporation has no adequate means of determining. The important fact may be the priority of the transfer over the seizure, or notice to the creditor of the transferee's rights, or laches on the part of the transferee; but in any case the fact is one as to the existence of which the corporation must decide at its peril. Now rule (*c*) bears so harshly on innocent purchasers that the tendency both of legislation and of judicial construction is to reduce its application to a minimum, thus diminishing the protection to the corporation in case of the duplication of certificates. The injustice to the corporation in compelling it to assume the risk of liability to the transferee of a certificate of stock by requiring it to issue a new certificate to a person claiming under a seizure of the stock is clear. The injustice, however, is the creation of statute, and it is to legislation, therefore, that we must look for a remedy which the courts have no power to give.

(*m*.) What remedy, then, is to be sought for this unfortunate condition of affairs? The fate which has overtaken so many mighty schemes of law reform ought to inspire diffidence in any one who is minded to improve the law; yet to criticize the law without offering any suggestions for its betterment is permissible only to a layman. The suggestion that I would venture, with all deference, to make is a simple, yet a radical one.

Had the decisions of Lord Hardwicke governed his successors, and had the opinions of Chancellor Kent controlled American courts of equity, much of the difficulty that has arisen in regard to the transfer of stock might have been avoided.[1] It is clear that a debtor's choses in action ought to be subject to the claims of his creditors; but the common law had no means of reaching choses in action. It is hard to conceive of a clearer case for the application of equitable relief than this, yet such relief has been generally denied. The injustice of courts of equity in refusing such relief has induced the legislature to provide statutory remedies for the creditor. Unfor-

[1] Bigelow on Fraud, II. 70-76.

tunately, the statutory remedies have been processes like attachment and execution which are adapted in their nature only to the seizure of corporeal property. In the case of stock the injustice wrought by these statutory remedies has been pointed out. The most satisfactory method for protecting the creditor, the purchaser, and the corporation seems to be this. Abolish all seizure of stock by process *in rem*, and remit the creditor to a court of equity for relief. If the registered owner of stock is the real owner, the creditor would then reach the stock by a creditor's bill. The decree would require the defendant to transfer the certificates to the creditor, or to a receiver who should offer them for sale. Duplication of certificates in consequence of our present legislation requiring the issue of new certificates without the cancellation of the old would then cease. Such duplication is clearly recognized by the courts as an injustice to the corporation, and they will not compel it in the absence of statute.[1]

## II. Seizure of Stock Certificates.

One word must be said in regard to the second theory concerning the seizure of stock, that stock may be seized by seizing the certificates. It is generally held that stock can be seized only at the domicile of the corporation, and that the seizure of the certificates cannot affect the title to the stock.[2] In Louisiana, however, stock may be seized either in the usual manner, by notifying the corporation, or by seizing the certificates.[3] And in Minnesota the garnishment statutes of that State have recently been held to apply to certificates of stock in foreign corporations. In *Puget Sound National Bank* v. *Mather*,[4] the garnishee held certificates of stock in a Wash-

[1] Joslyn *v.* St. Paul Distilling Co., 44 Minn. 183, 46 N. W. 337 (1890); Bean *v.* American Loan & T. Co., 122 N. Y. 622, 26 N. E. 11 (1890).

[2] Younkin *v.* Collier, 47 F. 571 (1891); Winslow *v.* Fletcher, 53 Conn. 390, 4 A. 250 (1886); Reid Ice Cream Co. *v.* Stephens, 62 Ill. App. 334 (1895); Smith *v.* Downey, 8 Ind. App. 179, 34 N. E. 823 (1893); Armour Bros. Packing Co. *v.* St. Louis Nat. Bank, 113 Mo. 12, 20 S. W. 690 (1892); Plimpton *v.* Bigelow, 93 N. Y. 592 (1883); Christmas *v.* Biddle, 13 Pa. St. 223 (1850); Ireland *v.* Globe Milling Co., (R. I.) 32 A. 921 (1895); Moore *v.* Gennett, 2 Tenn. Ch. 375 (1875); Young *v.* So. Tredegar Iron Co., 85 Tenn. 189, 2 S. W. 202 (1886).

[3] Harris *v.* Bank of Mobile, 5 La. Ann. 539 (1850).

[4] 60 Minn. 362, 62 N. W. 396 (1895).

ington corporation, which had been pledged to it by the principal defendants as collateral security for a debt. The court held that the garnishment was proper; that the certificates were property of the defendants in the hands of the garnishee, and that they could be seized accordingly. The court further intimates that such certificates could be seized on attachment or execution. If this decision could stand, the difficulties arising from the duplication of stock certificates might be avoided. The sheriff could seize the certificates of stock, sell them on execution, and transfer them to the purchaser at the execution sale, who would then surrender them to the corporation and receive new ones. But the decision of the Minnesota court can no more affect the title to stock in a Washington corporation than it could affect the title to land in Washington. Stock in a Minnesota corporation may be seized in Minnesota by seizing the certificates; stock in a Louisiana corporation may be seized in Louisiana in the same way; over such property the legislature and the courts of the State have control. But the judgment of a court of one State cannot affect the title to property in another State; and it is too well settled to admit of argument that the situs of the stock for purposes of seizure is the domicile of the corporation. The owner of the stock in the Minnesota case would simply be in the position of a man whose certificates were lost or stolen. He would remain the owner of the stock, and should be entitled to a new certificate therefor upon proper terms.

§ 3. Compulsory Duplication of Certificates in Consequence of Supposed Loss or Destruction of Originals.

Where a certificate of stock has been lost or destroyed, it is generally held that the corporation must issue a duplicate certificate. Statutes exist in some jurisdictions authorizing the courts to compel the issue of duplicate certificates in such cases. On general principles, however, it seems that a court of equity has jurisdiction to decree that a duplicate certificate shall be issued in such cases.[1] The question then arises as to

[1] Kinnan *v.* Forty-second St. R. Co., 140 N. Y. 183, 35 N. E. 408 (1893); Galveston City Co. v. Sibley, 56 Tex. 269 (1882).

the effect of the original certificate, which may be still outstanding. Suppose that the registered owner of stock by alleging that he has lost his certificate procures a duplicate, and then transfers the two certificates to different purchasers for value and without notice? It seems that the prior transferee would have the prior equitable right, but that if either transferee acquired the legal title to the stock in consequence of the recognition of his transfer by the corporation, his title would not be disturbed. What then is the right of the innocent purchaser of the other certificate? Clearly he has a right of action against the corporation in accordance with the general principles stated in § 1.[1] It follows that a bond of indemnity should always be required by the corporation of the person who seeks to compel the issue of a duplicate certificate in consequence of the alleged loss or destruction of the original. Where the court acts in the exercise of its general equity jurisdiction this bond is generally, and should be always required.[2] In England the custom seems to be to require indemnity only in the absence of satisfactory proof of loss.[3] In New York, in addition to the equitable remedy, the statute of 1873, c. 151, provides a summary remedy for the stockholder, but requires indemnity. In Minnesota the Act of 1893, c. 45, requires indemnity; but in case the certificate has not been heard of for seven years no indemnity need be given.[4] In Louisiana no indemnity is required.[5] In Missouri it has been held, not by the court of last resort, that even the giving of indemnity will not entitle the stockholder to a new certificate in regular form,

[1] Keller *v.* Eureka Brick Co., 43 Mo. App. 84 (1890); Brisbane *v.* Delaware, L. & W. R. Co., 94 N. Y. 204 (1883); Cleveland & M. R. Co. *v.* Robbins, 35 Ohio St. 483 (1880); Galveston City Co. *v.* Sibley, *supra*; Greenleaf *v.* Ludington, 15 Wis. 558 (1862). The *dictum* to the contrary in Guilford *v.* Western Union Tel. Co., 59 Minn. 332, 61 N. W. 324 (1894) is unsound and opposed to the more reasonable view taken by the same court in Joslyn *v.* Distilling Co., 44 Minn. 186, 46 N. W. 377 (1890).

[2] Guilford *v.* Western Union Tel. Co., 43 Minn. 434, 46 N. W. 70 (1890); Galveston City Co. *v.* Sibley, 56 Tex. 269 (1882); where no new certificate was issued, but the cause was kept standing on the docket for the protection of the corporation.

[3] See Société de Paris *v.* Walker, 11 A. C. 20 (1886); London *v.* Prov. Tel. Co., L. R. 9 Eq. 653 (1870).

[4] Guilford *v.* Western Union Tel. Co., 59 Minn. 332, 61 N. W. 324 (1894).

[5] Phillips *v.* New Orleans Gas Light Co., 25 La. Ann. 413 (1873).

but that the new certificate must be marked "duplicate" and refer to the decree authorizing it.[1]

Although a bond of indemnity offers some protection to the corporation issuing a duplicate certificate in place of one alleged to be lost, such protection is not always required, and may prove inadequate. How then shall the corporation be pretected and the rights of the stockholder who has lost his certificate be preserved at the same time? The attempted solutions of this problem do not seem to have been very successful. If a new certificate is issued in the form prescribed by the Missouri court, it will be unmarketable. The Supreme Courts of Minnesota and Louisiana have met the difficulty by assuming that a transferee of the original certificate could acquire no rights against the corporation,[2] an assumption manifestly unsound. In New York the Act of 1873, c. 151, provides that when a new certificate is issued, and a bond of indemnity given, the holder of the original certificate shall have no further claim against the corporation, but shall be remitted to the bond of indemnity. This provision has been attacked by Mr. Thompson[3] as unconstitutional, involving the taking of property without due process of law. The criticism seems just. If A. is the registered owner of stock, and B. buys his certificate, B. acquires a right to demand a transfer of the stock on the books of the corporation. This is a right of property, a chose in action, and cannot be taken from B. by a proceeding to which he is not a party.

There seems to be only one way to protect both the corporation and the stockholder who has lost his certificate. An act might be passed providing for an equitable proceeding in the nature of a bill to quiet title. A bill of this kind, brought by the registered owner against the corporation and the "unknown claimants" to the stock, would enable the court to enter a decree barring the rights of any transferee of the original certificate, and thus protecting the corporation.

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[1] Keller *v.* Eureka Brick Co., 43 Mo. App. 84 (1890).

[2] Guilford *v.* Western Union Tel. Co., 59 Minn. 332, 61 N. W. 324 (1894); Phillips *v.* New Orleans Gas Light Co., 25 La. Ann. 413 (1873).

[3] Corporations, § 2524.